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IN THE
COURT OF APPEALS OF INDIANA

EMMA BENDER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A04-0702-CV-97
	)	
STATE EMPLOYEES APPEALS COMMISSION, BRANCHVILLE CORRECTIONAL FACILITY and DEPARTMENT OF CORRECTION,	)	
	)	
Appellees.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary L. Miller, Judge
Cause No. 49D05-0508-PL-30796

August 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Emma Bender appealed an employment decision through the procedures for state merit employees up to and including review by the State Employees Appeals Commission ("SEAC"). SEAC dismissed her appeal without a hearing. She then sought judicial review, and the trial court affirmed SEAC's decision. She appeals raising four issues, but one issue is dispositive, namely: whether Indiana Code Section 4-15-2-35 prohibits SEAC from dismissing an appeal without a hearing.

We affirm.

FACTS AND PROCEDURAL HISTORY

Bender is employed by the Indiana Department of Correction ("DOC") at the Branchville Correctional Facility ("BCF"). On April 15, 2005, her shift supervisor informed her that she would not be assigned to the rear sally port[1] unless there was sufficient staff to allow a male employee to be assigned with her. She filed a merit complaint alleging that this change in assignment was based only on her sex.

Major Summers of BCF submitted this response:

> Administrative Policy #02-02-101 requires that staff being searched shall be searched by the same gender. In order to accomplish this, it became necessary to reassign you to different duties. The Shift supervisor was put in the position of having to take a male staff member off their post in order to shakedown males coming through the Rear [sally port]. While it is true that females come through the Rear [sally port] thereby requiring a female staff to go to the Rear [sally port] to perform the shakedown, the frequency at which this happened was far less than male staff coming through the Rear [sally port].

[1] Webster's Third New International Dictionary defines "sally port" as: 1) a large gate or passage in a fortified place suitable for the use of troops making a sortie; 2) a similar passageway esp. through the lower story of buildings (as barracks) forming a quadrangle.

> My office felt in order to have a more efficient operation at the Rear [sally port], it made more sense to have a male assigned to this post.
>
> In an effort to allow you to continue to work at the Rear [sally port] and to also not burden the Shift Supervisor with having to continually send a male staff to the Rear [sally port], I instructed the Shift Supervisor to let you work at the Rear [sally port] with you. If he did not have sufficient staff, then he would assign a male to the Rear [sally port] and reassign you to other duties. This is the most logical thing to do in my opinion.

Appellant's App. 21. Because Bender was dissatisfied with Summers' response, she took her complaint to the DOC appointing authority. The appointing authority found Summers' response to be appropriate.

Bender then appealed to the State Personnel Department ("SPD"). On June 7, Bruce Baxter from SPD informed Bender that her complaint had been investigated.

> This investigation has revealed that little can be added to the Step 3 response. Indiana Administrative Code (IAC), Merit Rules, 2-7-7 (A) states "An appointing authority may at any time assign an employee from one position to another position in the same class under his jurisdiction." Management has the right to transfer or reassign employees at their discretion and as operational needs require. You were reassigned based on the operational needs of the facility.

Appellant's App. at 23. Baxter also told Bender that she had fifteen days to appeal his response to SEAC.

Bender filed her appeal with SEAC on June 27. SEAC's Chief Administrative Law Judge filed a Notice of Proposed Dismissal on June 29, finding that Bender's complaint did not qualify for administrative review under Indiana Code Sections 4-21.5-3-7 and 4-15-2-35. Bender, represented by a United Auto Workers International Representative, filed her opposition to that Notice stating "that she was removed from her position based [solely on] her sex and not job performance. There is no bona fide

occupational qualification in the [DOC]." Id. at 26. On July 11, SEAC issued its final order of dismissal:

> [Bender] is now represented [and] filed a response to the Notice of Proposed Dismissal. In the response[, Bender] raised no issues that would cause this case to be further litigated.

Id. at 16.

On July 22, Bender filed an appeal to SEAC's Full Commission. SEAC denied that appeal on the same day. Bender petitioned for judicial review on August 8. Bender alleged the following errors: 1) SEAC's order dismissing her complaint "is unsupported by substantial evidence, arbitrary, capricious, an abuse of discretion, inconsistent with the requirements of applicable statutes and otherwise not in accordance with law"; 2) SEAC does not have the statutory authority to dismiss her complaint without a hearing; and 3) the dismissal without a hearing violated the law. Appellees' Appendix at 4-5. After briefing, the trial court issued its Findings of Fact and Conclusions of Law on January 19, 2007, affirming SEAC's dismissal of Bender's appeal. This appeal ensued.

DISCUSSION AND DECISION

Bender contends that she is entitled to a public hearing by Indiana Code Section 4-15-2-35[2] because she complied with the administrative steps contained within this statute.

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[2] Indiana Code Section 4-15-2-35 reads:

> (a) This section does not apply to an employee who has been suspended or terminated by the ethics commission.
>
> (b) Any regular employee may file a complaint if the employee's status of employment is involuntarily changed or if the employee deems conditions of employment to be unsatisfactory. However, the complaint procedure shall be initiated as soon as possible after the occurrence of the act or condition complained of and in no event shall be initiated more than thirty (30) calendar days after the employee is notified of a change in the status of employment or after an unsatisfactory condition of employment is created.

Failure to initiate the complaint procedure within this time period shall render the complaint procedure unavailable to the employee. The following complaint procedure shall be followed:

Step I: The complaint procedure shall be initiated by a discussion of the complaint by the employee and the employee's immediate supervisor and, if a mutually satisfactory settlement has not been made within two (2) consecutive working days, the complaint may be referred to Step II.

Step II: The complaint shall be reduced to writing and presented to the intermediate supervisor. If a mutually satisfactory settlement has not been reached within four (4) consecutive working days, such complaint may then be referred to the appointing authority.

Step III: The appointing authority or the appointing authority's designee shall hold a hearing, if necessary, and conduct whatever investigation the appointing authority or the appointing authority's designee considers necessary to render a decision. The appointing authority or the appointing authority's designee must render a decision in writing not later than ten (10) business days from the date of the hearing, if applicable, or close of the investigation, whichever occurs later.

If the appointing authority or the appointing authority's designee does not find in favor of the employee, the complaint may be submitted within fifteen (15) calendar days to the state personnel director. The director or the director's designee shall review the complaint and render a decision not later than fifteen (15) calendar days after the director or the director's designee receives the complaint. If the decision is not agreeable to the employee, an appeal may be submitted by the employee in writing to the commission not later than fifteen (15) calendar days from the date the employee has been given notice of the action taken by the personnel director or the director's designee. After submission of the appeal, the commission shall, prior to rendering its decision, grant the appealing employee and the appointing authority a public hearing, with the right to be represented and to present evidence. With respect to all appeals, the commission shall render its decision within thirty (30) days after the date of the hearing on the appeal. If the commission finds that the action against the employee was taken on the basis of politics, religion, sex, age, race, or because of membership in an employee organization, the employee shall be reinstated without loss of pay. In all other cases the appointing authority shall follow the recommendation of the commission, which may include reinstatement and payment of salary or wages lost by the employee, which may be mitigated by any wages the employee earned from other employment during a dismissed or suspended period.

If the recommendation of the commission is not agreeable to the employee, the employee, within fifteen (15) calendar days from receipt of the commission recommendation, may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations, and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

All of her claims of error arise from SEAC's failure to hold a hearing prior to dismissing her appeal. SEAC responds that it "could not find that [Bender's] transfer is a change of employment status or an unsatisfactory condition of employment under Indiana Code [Section] 4-15-2-35" and, consequently, it properly dismissed Bender's complaint as having no merit. Appellees' Brief at 9. The gist of SEAC's argument is two-fold: 1) the mandatory public hearing[3] language applies only where SEAC first finds that the complaint has merit; and 2) a complaint only has merit if the employee's status of employment is involuntarily changed or the employee deems conditions of employment to be unsatisfactory.

The scope of judicial review of an administrative decision is contained in Indiana Code Section 4-21.5-5-14. See Higgins v. State, 855 N.E.2d 338, 341 (Ind. Ct. App. 2006). That statute reads:

> (a) The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity.
>
> (b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.
>
> (c) The court shall make findings of fact on each material issue on which the court's decision is based.

Ind. Code § 4-15-2-35 (2006).

[3] Indiana Code Section 4-15-2-3.5 defines a public hearing:

> "Public hearing" means a hearing held after notice as provided in IC 4-15-2 in which an individual may have a reasonable opportunity to be heard.

I.C. § 4-15-2-3.5.

> (d) The court shall grant relief under section 15 of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:
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> > (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> > (2) contrary to constitutional right, power, privilege, or immunity;
> > (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
> > (4) without observance of procedure required by law; or
> > (5) unsupported by substantial evidence.

Ind. Code § 4-21.5-5-14 (2005).

Both parties agree that this case centers on SEAC's interpretation of relevant statutes. When the basis of an administrative agency's decision relies on the interpretation of the relevant statutes, such interpretation is entitled to great weight "so long as the agency's interpretation is reasonable." Higgins, 855 N.E.2d at 341-42.

> However, an agency's interpretation that is incorrect is entitled to no weight. If an agency misconstrues a statute, there is no reasonable basis for the agency's ultimate action, and, therefore, the trial court is required to reverse the agency's action as being arbitrary and capricious.

Indiana-Kentucky Elec. Corp. v. Commissioner, Indiana Dept. of Environmental Management, 820 N.E.2d 771, 777 (Ind. Ct. App. 2005) (citations omitted).

When interpreting a statute, the first step is to determine whether the legislature has spoken clearly and unambiguously on the point in question. Heidbreder, Inc. v. Board of Zoning Appeals of City of Crown Point, 858 N.E.2d 199, 200 (Ind. Ct App. 2006), trans. denied. We do not apply any rules of statutory construction when a statute is clear and unambiguous, other than to require that words and phrases be taken in their plain, ordinary, and usual sense. Id.

There is no language in Indiana Code Section 4-15-2-35 that expressly authorizes SEAC to dismiss an appeal. Nor does the statute expressly define a meritorious complaint. SEAC does not argue this statute is unambiguous, but rather, urges us to consider other statutes to find its authority to dismiss an appeal without a hearing. When a statute is susceptible to more than one reasonable interpretation, it is ambiguous and must be construed to determine legislative intent. Id. Statutory interpretation is a question of law and such determinations are subject to de novo appellate review. Higgins, 855 N.E.2d 338 at 341. The primary goal of statutory construction is to determine, give effect to, and implement the intent of the legislature. Sees v. Bank One, Indiana, N.A., 839 N.E.2d 154, 157 (Ind. 2005).

Indiana Code Section 4-15-2-35 is situated within Title 4. State Offices and Administration, Article 15. Personnel Administration, and Chapter 2. State Merit Employment. The first section of this chapter reads:

> This chapter shall be known and may be cited as the "State Personnel Act". This chapter shall be liberally construed to effectuate its policies and purposes to increase governmental efficiency, to ensure the appointment of qualified persons to the state service solely on the basis of proved merit, to offer any person a fair and equal opportunity to enter the state service, and to afford the employees in state service an opportunity for public service and individual advancement according to fair standards of accomplishment based upon merit principles. To these ends there is by this chapter established a personnel system based on merit and scientific methods relating to the appointment, compensation, promotion, transfer, lay off, removal, and discipline of employees and to other incidents of state employment.

I.C. § 4-15-2-1. The legislative intent to which we must give effect is the promotion of governmental efficiency in the appointment of qualified persons to state service and the provision of fair and equal opportunities for individual advancement under established

standards. We read the sections of an act together so that no part is rendered meaningless if it can be harmonized with the remainder of the statute. Heidbreder, Inc., 858 N.E.2d at 200. We also presume that the legislature intended language in a statute to be applied logically and in a manner that will not produce an unjust or absurd result. Id.

In Rockville Training Center v. Peschke, 450 N.E.2d 90 (Ind. Ct. App. 1983), we interpreted Indiana Code Section 4-15-2-35 without reaching this specific issue. 450 N.E.2d at 92. We addressed whether an arbitrator exceeded his statutory authority by addressing the merits of an employee's complaint, which the reviewing trial court affirmed. Id. at 91. We held that the arbitrator exceeded his statutory authority when he reached the merits of the complaint. Id. at 93.

> We emphasize that the prerequisite to arbitration is not a disagreeable decision, but an unsatisfactory recommendation. The fact a recommendation is made presumes a decision that the complaint is meritorious, both procedurally and substantively. The recommendation is the solution to the complaint, i.e., the remedy, and, as such, presupposes there is merit to the complaint. If the employee is dissatisfied with the remedy, then it is this remedy which is subject to arbitration. However, if the decision is that the complaint is without merit whether on a procedural point or on a substantive point, there is, of course, no recommendation. There is only a decision. Such a decision, i.e., one without a recommendation, is not subject to arbitration. The only course available to an employee who suffers an adverse decision, i.e., the Commission decides the complaint is either without procedural merit or substantive merit, is to appeal that decision pursuant to the Administrative Adjudication Act.

Id. at 92 (emphasis in original). Although we noted that an employee had a right to file a complaint and the right to be represented and present evidence during an appeal, we did not hold that such employee had a right to a hearing. Indeed, we specifically acknowledged that SEAC could make a "decision . . . that the complaint is without merit

whether on a procedural point or on a substantive point," which would not be subject to arbitration. Id. at 91-92.

The right for state employees to file a complaint under Indiana Code Section 4-15-2-35 is qualified by the statute's plain language. "Any regular employee may file a complaint if the employee's status of employment is involuntarily changed or if the employee deems conditions of employment to be unsatisfactory." I.C. § 4-15-2-35(b) (emphasis added). This language expresses the legislative intent that an employee must first have been subjected to either a change in status or unsatisfactory conditions in order to file a complaint. In other words, one of those conditions must precede the filing of the complaint. Requiring certain conditions to be met prior to the filing of a complaint promotes the goal of "governmental efficiency" identified in Indiana Code Section 4-15-2-1.

Bender's complaint, in its entirety, reads:

> On 4-15-05 I[, Officer] Bender was notified by my shift supervisor[,] Lt. Bolen, that per Maj. Summers, I would no longer be assigned to the rear sally port unless there were enough staff on shift to allow for a male of[ficer] to also be assigned there. The reasons given was that a male of[ficer] had to walk back to the sally port to assist in the shakedown of male staff. Female staff also enter through the rear sally port[,] which means currently that a female must walk back to shakedown female staff. At numerous state facilities females do shakedown [sic] male staff without it being an issue. The only reason that is being given to me for moving me is the fact that I am female.

Appellant's App. at 21. In a later pleading, Bender alleges "that she was removed from her position based [solely on] her sex and not job performance. There is no bona fide occupational qualification in the [DOC]." Id. at 26. Bender, however, never alleged that

her status of employment involuntarily changed or that she deems the conditions of her employment to be unsatisfactory.

Under the complaint procedure, SEAC is not ruling on the propriety of any previous decision on Bender's complaint, but the complaint itself. I.C. § 4-2-15-35. "[T]he employee is again submitting the complaint, only this time the complaint is submitted to the Commission." Rockville Training Center, 450 N.E.2d at 92 (emphasis in original). Indiana Code Section 4-15-1.5-6(a) authorizes SEAC "[t]o hear or investigate those appeals from state employees as is set forth in IC 4-15-2, and fairly and impartially render decisions as to the validity of the appeals or lack thereof." I.C. § 4-15-1.5-6 (emphasis added).[4] Subsection (a) of Indiana Code Section 4-15-1.5-6 relates to SEAC's appellate authority over individual cases. Indiana Dept. of Environmental Management v. West, 838 N.E.2d 408, 417-18 (Ind. 2005). The plain language of this statute authorizes SEAC to decide when an appeal lacks validity.

When two statutes exist on the same subject, it is our duty to give effect to both, if possible. Dierckman v. Area Planning Com'n of Franklin County, Ind., 752 N.E.2d 99,

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[4] The entire statute reads:

> The appeals commission is hereby authorized and required to do the following:
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> (1) To hear or investigate those appeals from state employees as is set forth in IC 4-15-2, and fairly and impartially render decisions as to the validity of the appeals or lack thereof. Hearings shall be conducted in accordance with IC 4-21.5.
> (2) To make, alter, or repeal rules by a majority vote of its members for the purpose of conducting the business of the commission, in accordance with the provisions of IC 4-22-2.
> (3) To recommend to the personnel director such changes, additions, or deletions to personnel policy which the appeals commission feels would be beneficial and desirable.

I.C. § 4-15-1.5-6.

106 (Ind. Ct. App. 2001), trans. denied. Both Indiana Codes Sections 4-15-1.5-6 and 4-2-15-35 specifically address the subject of state employees' appeals to SEAC. In order to give both statutes effect, SEAC must have the ability to judge the validity of the appeal. When the appeal is valid, SEAC "shall, prior to rendering its decision grant the appealing employee and the appointing authority a public hearing." I.C. § 4-15-2-35(b).

Contrary to Bender's argument, our Supreme Court did not hold that Indiana Codes Section 4-15-2-35 limits Indiana Code Section 4-15-1.5.6 in all respects. In Indiana Dept. of Environmental Management v. West, our Supreme Court resolved the interaction between those two statutes on a different point, whether SEAC was statutorily authorized to "mandate[] the creation of new jobs" as a remedy. 838 N.E.2d at 417.

> A reading of the plain language of Section 4-15-1.5-6 leads us to conclude that the proper interpretive emphasis should be placed on Subsection (1), rather than Subsection (3). Subsection (1) states plainly that SEAC's power to conduct appeals is governed by the provisions enumerated in Sections 4-15-2 et seq. That chapter under Section 4-15-2-35 expressly limits SEAC's remedial authority and provides only for reinstatement where action is taken on the basis of politics religion, sex, age, race or membership in an employee organization.

Id. That opinion did not consider whether a hearing was required for every appealed complaint. "[T]he plain language of Indiana Code Sections 4-15-1.5-6(1) and 4-15-2-35, when read together, unambiguously limits SEAC's remedial power in employment discrimination actions on the basis of age to reinstatement." Id. at 418.

Bender argues that her complaint is valid because she alleges that the complained of action was taken on the basis of one of the identified categories: politics, religion, sex, age, race, or because of membership in an employee organization. She reaches this conclusion by connecting the mandatory public hearing requirement with SEAC's ability

to take remedial action, which reads, "If the commission find that the action against the employee was taken on the basis of politics, religion, sex, age, race, or because of membership in an employee organization, the employee shall be reinstated without loss of pay." I.C. 4-15-2-35(b). But these two sentences are separate and distinct grants of authority to SEAC. It does not follow that such an allegation, i.e., the complained of action is due to one of those categories, creates a separate basis for complaint. If so, an employee would be relieved from alleging of the qualifying conditions required to file a complaint. Such an interpretation of Indiana Code Section 4-15-2-35 contradicts the statute's plain language.

Bender's interpretation of Indiana Code Section 4-15-2-35 also effectively negates SEAC's statutory authority to determine whether an appeal is valid.[5] Such interpretation also directly contradicts the legislative intent of providing a fair and efficient procedure to state employees. Statutes relating to the same general subject matter are in pari materia and should be construed together so as to produce a harmonious statutory scheme. Heidbreder, Inc., 858 N.E.2d at 200. Consequently, we hold when SEAC determines that an appeal has no validity, whether on a procedural or substantive basis, SEAC is not required to hold a public hearing prior to dismissing the complaint.

SEAC reads Bender's complaint to allege a change of status and rejects that allegation due to the operation of yet another statute in the State Personnel Act. The basis for the dismissal of Bender's complaint throughout the procedure was her

[5] On the other hand, if we assume that SEAC's express statutory authority to determine the validity of an appeal remains in tact under Bender's interpretation, SEAC would be required to hold a hearing on a complaint that it has already determined lacks validity. This is an absurd result, and "[w]e do not presume that the legislature intended language in a statute to be applied illogically or to bring about an unjust or absurd result." Heidbreder, Inc., 858 N.E.2d at 200.

appointing authority's ability to change her position within the same class.[6] Indiana Code Section 4-15-2-24 specifically authorizes "[a]n appointing authority . . at any time [to] assign an employee from one position to another position in the same class or rank in his division of the service." I.C. § 4-15-2-24. Consequently, SEAC ruled that because Bender's status had not changed, her complaint failed to state a claim.

We also reject Bender's contention that her appeal was dismissed without due process.[7] Indeed, Bender received review of her complaint according to the process outlined in Indiana Code Section 4-15-2-35. She completed Steps I, II, and III by presenting her complaint to her supervisor, intermediate authority, and appointing authority. Bender also received SPD's investigation and review. Finally, SEAC considered and ruled on her complaint in three separate stages, the CALJ's Notice of Proposed Dismissal to which Bender responded, the Dismissal, and the Denial of Appeal to Full Commission.

The full substance of Bender's complaint is that she was reassigned from one position to another because she was a female. Bender argues that SEAC's "statutory interpretation would gut I.C. 4-15-2-35's prohibition of employment action on the basis

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[6] Indiana Code Section 4-15-2-2.3 defines "class":

> "Class" or "class of positions" means a group of positions in the state classified service sufficiently similar in duties, authority, and responsibility that:
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> (1) the same qualifications may reasonably be required for; and
>
> (2) the same schedule of pay can be equitably applied to;
>
> all positions in the group.

I.C. § 4-15-2-2.3.

[7] As noted above, Bender's appellate issues all stem from SEAC's failure to hold a public hearing: 1) SEAC's decision rendered without a hearing was arbitrary and capricious; 2) the CALJ acted outside his statutory authority by dismissing her appeal without a hearing; and 3) she was denied due process because SEAC did not hold the hearing.

of politics, religion, sex, age, race and membership in an employee organization of any meaning." Reply Brief at 6. We cannot agree. This interpretation only allows SEAC to dismiss an appeal where the underlying complaint fails to allege one of the qualifying conditions. It is not unduly burdensome to require an employee to satisfy the minimal requirements of the complaint procedure by alleging one of the qualifying conditions prior to receiving an appeal to the full commission that includes a public hearing.

In sum, the legislative intent in enacting the State Personnel Act was to promote a fair and efficient system for appointing employees while allowing those employees individual advancement. SEAC is expressly authorized by statute to determine whether an appeal is valid, the complaint procedure statute requires the existence of a specific condition in an employee's complaint, and the public hearing is mandatory only for a valid appeal. Thus, SEAC reasonably interpreted the relevant statutes, and it dismissed Bender's appeal without a hearing.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.